



ELECTION NEWS

A special informational bulletin
on the conduct of the November 2,
2004 general election

Michigan Department of State - Terri Lynn Land, Secretary of State

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Standards for Determining Validity of Federal Write-In Absentee Ballots Changed: Changes Effective for November 2, 2004 General Election

As detailed in Issue No. 4 of *Election News*, the Federal Write-In Absentee Ballot (FWAB) is a special write-in ballot which can be used to vote for federal offices only. The form is provided and distributed by the federal government. The following persons are eligible to use an FWAB:

- 1) Members of the Armed Forces and their spouses and dependents.
- 2) Members of the Merchant Marine and their spouses and dependents.
- 3) U.S. citizens temporarily living or traveling outside of the territorial limits of the United States.

Changes in the standards which must be employed to determine the validity of FWAB's were given immediate effect on October 28, 2004 when the President signed the FY05 National Defense Authorization Act. The changes are detailed below:

Previous standards for determining validity of FWAB's: Under the previous standards for determining the validity of FWAB's, an FWAB was counted if 1) the FWAB was signed by the voter 2) the FWAB arrived from an overseas address 3) the voter submitted a written request for an absentee ballot on or before October 4, 2004 and 4) the absentee ballot issued to the voter by the voter's city or township clerk did not arrive back in the clerk's office in time to be counted.

New standards for determining validity of FWAB's: Under the new standards for determining the validity of FWAB's, an FWAB is counted if 1) the FWAB is signed by the voter 2) the FWAB arrives from an overseas address or an address within the United States if submitted by a member of the Uniformed Services or merchant marine on active duty who is away from his or her Michigan jurisdiction of residence or a spouse or dependent of such a voter who is away from his or her Michigan jurisdiction of residence 3) the voter submitted a written request for an absentee ballot on or before October 30, 2004 and 4) the absentee ballot issued to the voter by the voter's city or township clerk does not arrive back in the clerk's office in time to be counted.

"Uniformed services" includes the United States Army, Navy, Air Force, Marine Corps, Coast Guard; the Michigan National Guard; the commissioned corps of the Public Health Service; and the commissioned corps of the National Oceanic and Atmospheric Administration.

Summary of changes in FWAB validity standards: Given the above, there are two changes in the standards which must be employed to determine the validity of FWAB's returned for the November 2, 2004 general election:

- The first change is that Uniformed Services members on active duty, members of the merchant marine, and their spouses or dependents who are in the United State but are away from their Michigan jurisdiction of residence by reason of the active duty or merchant marine service are authorized to use the FWAB as a back-up ballot in the same manner as overseas voters.
- The second change is that states must count an FWAB received from a voter whose absentee ballot application is received by the deadline established by the state for requesting an absentee ballot for the election as opposed to 30 days before the election. In Michigan, the deadline for requesting an absentee ballot for the November 2 general election elapsed on October 30, 2004.

Reminders: Several pertinent reminders regarding the use and processing of FWAB's are provided below:

- For the November 2 general election, the FWAB can be used to vote for the federal offices on the ballot (U.S. President and U.S. Representative); it cannot be used to vote for any other offices or on proposals.
- A voter using an FWAB can cast a vote for a candidate seeking a federal office at the election by writing in the candidate's name or political party. If the voter writes in the name of a political party, a vote is counted for the candidate seeking the office under the indicated party's vignette.
- A voter is not required to mark a cross or a checkmark on the FWAB.
- Federal law provides that any abbreviation, misspelling or other minor variation in the form of a candidate's name or the name of a political party is to be disregarded in determining the validity of the vote cast if the voter's intention can be determined.

Important Reminders and Points of Information

Challengers and poll watchers prohibited from distributing any written materials to voters in the polling place: Michigan election law, MCL 168.744(3), prohibits the distribution of any material "that directly or indirectly makes reference to an election, a candidate, or a ballot question" anywhere within 100 feet of any doorway being used by voters to enter the building in which the polling place is located. The restriction does not apply to official material that is required by law to be posted, displayed or distributed in a polling place on election day. Given the restriction, challengers and poll watchers are not permitted to distribute any type of handout or informational materials inside the polling place on election day.

Heightened ballot security provisions: Michigan election law, MCL 168.810a, stipulates that upon the request of the county clerk, a member of the board of county canvassers or a county political party chairperson ("major political parties" only), the city or township clerk is required to initiate the following ballot security measures until the board of county canvassers meet at 1:00 p.m. on the day after the election: 1) immediately place all election materials in a secure location (includes ballots and keys to voting machines) 2) ensure that he or she is the only person

who has access to the secured election materials and 3) make arrangements for any individual designated by a county political party chairperson to monitor “all access points to the secure location” until 1:00 p.m. on the day following the election.

The statute further stipulates that when the board of county canvassers meet, the county clerk, a member of the board of county canvassers or a county political party chairperson may petition for a continuation of the security measures. If the request is granted, the board of county canvassers is required to prescribe “the amount of security to be provided and the persons responsible for that security.”

Public release of Four-Step Procedure forms completed in your jurisdiction: If you receive any requests for copies of the Four-Step Procedure forms completed by voters who are issued provisional ballots in your jurisdiction, please be aware that the document are public records and must be released upon request. When releasing the Four-Step Procedure form to satisfy a public information request, the following data must be “blocked” out as it is exempt from disclosure: 1) the voter’s driver license or personal identification card number 2) the month and day of the voter’s birthdate and 3) the voter’s phone number.

Scheduling Local Recounts

County and local recounts requested after the November 2 general election may not be conducted until written clearance is received through the Michigan Department of State’s Bureau of Elections. **All ballots, voting equipment, programs and other materials placed under security must remain sealed until instruction is received through the Bureau.** A memo on the conduct of county and local recounts will be forwarded to all county clerks in late November.

If there are no recounts in your county which fall under the authority of the Board of State Canvassers, the memo will authorize the immediate conduct of any local recounts requested in your county. If, on the other hand, recounts which fall under the authority of the Board of State Canvassers must be conducted in your county, the memo will direct you to standby for further instruction from this office before proceeding with any local recounts.

Authority to Correct Errors During Canvass Process

When conducting a canvass of votes, the Board of County Canvassers has the authority to take any of the actions listed below. (MCL 168.823)

- Direct that any records related to the election be presented at the canvass.
- Open ballot boxes to remove any records related to the election which have been secured in the ballot boxes. (The Board does **not** have the authority to remove the ballots secured in the ballot boxes.)
- Correct obvious mathematical errors made by the election inspectors or other canvassing boards. (Make all corrections in red next to inaccurate entries; do not erase mistakes!)
- Direct the election inspectors to correct precinct records found to be incorrect or incomplete.

Power to correct errors in optical scan and punch card precincts: If there appears to be a discrepancy in the records completed for an optical scan or punch card precinct, the Board has the authority to:

- If a punch card precinct, examine the punch card voting devices and ballot labels.
- Direct the person who wrote the program to appear at the canvass with all papers and documents pertinent to the program to answer any questions relevant to the program.
- Direct the person who has custody of the program to 1) present the program at the canvass in its sealed container 2) remove the program from its container and 3) test the program to verify its accuracy. If the program is found to produce inaccurate results, the Board may require the programmer to submit a corrected program. Once the corrected program has been verified as accurate, the Board may direct the appropriate persons to retabulate the ballots and certify the results.
- Direct the person who has custody of the transfer cases and ballot containers to 1) appear at the canvass with the sealed transfer cases or ballot containers 2) open them and 3) remove any documents required to complete the canvass.
- Direct the election inspectors who certified the returns to tabulate any uncounted ballots.

Power to correct errors in paper ballot precincts: If there appears to be a discrepancy in the records completed for a paper ballot precinct, the Board has the authority to summon the ballot boxes containing the ballots cast in the precinct and direct the precinct inspectors who served in the precinct to re-tally the ballots.

Power to correct errors in voting machine precincts: If there appears to be a discrepancy in the records completed for a voting machine precinct, the Board has the authority to open the counter compartments of the voting machines used in the precinct to verify the vote totals recorded on the machine. If the discrepancy cannot be found and corrected through a re-canvass of the voting machines in the precinct, the Board may direct that the voting machines be tested for proper operation. In exercising these powers, the procedures provided under Michigan election law, MCL 168.792, must be followed.

After exercising any of the above powers, the Board of County Canvassers is responsible for ensuring that all the voting equipment involved is resealed and returned to the custody of the appropriate officials. The serial numbers appearing on the seals used to reseat the voting equipment must be recorded in the proper Poll Books and in the minutes of the Board's meeting.

Recount Chronology: November 2, 2004 General Election

Certification of Results

- County Canvassing Boards complete the canvass of the general election in their respective counties no later than November 16, 2004. Results for county and local offices are certified as official. Results for state level offices are forwarded to Secretary of State within 24 hours.

- Board of State Canvassers meets canvass and certify state-level offices no later than November 22, 2004. Board authorizes staff to act on its behalf if recounts are requested.
- If differential in the vote for U.S. President in Michigan is less than 25,000 votes, the Secretary of State can direct County Canvassing Boards to complete the canvass of the votes cast for U.S. President on any date between November 9 and November 15, 2004. If an expedited canvass is ordered, the Board of State Canvassers would be required to certify the result as soon as practicable but no later than November 22, 2004.

Petitioning Process

- A candidate who seeks nomination to a county office, township office, the office of Probate Judge or any other local office on the general election ballot who wishes to obtain a recount must submit a “recount petition” to the county clerk within six days after the Board of County Canvassers certified the results for the office involved.

A candidate who seeks nomination to the office of U.S. President, U.S. Representative in Congress, the office of State Representative or a judicial office (except Probate Judge) who wishes to obtain a recount must submit a “recount petition” to the Secretary of State within 48 hours after the Board of State Canvassers certified the results for the office involved.

- Petition must be notarized.
- Petition must claim “fraud or mistake” in the canvass of votes.
- Petition must specify precincts to be recounted. (Can request a “full” recount or “partial” recount.)
- A \$10.00 deposit per precinct must be included with petition. (Deposit returned if election is reversed.)
- Official receiving recount petition (Secretary of State or county clerk) immediately notifies all opponents that recount petition has been filed.
- Opponents can “counter petition” if a partial recount. If original recount petition was submitted on the county level, counter petition must be filed within 48 hours after the submission of original petition. If original recount petition was filed with the Secretary of State, counter petition must be filed by 4:00 p.m. on the seventh calendar day after the submission of original petition. Opponents can also file objections by 4:00 p.m. on the seventh calendar day after submission of original petition. If objections are filed, the canvassing board responsible for conducting the recount holds a hearing to consider the objections.

Coordination of State-Level Recounts; Conduct of Local Recounts

- As soon as the state-level recount deadline elapses, Secretary of State contacts the clerks of the counties where recounts are requested to initiate coordination of recounts.
Considerations:

- Date, time and place.
- Coordination of an orientation/training session with Board of County Canvassers, candidates, and representatives of candidates. (Usually held immediately prior to conduct of recount.)
- Rules and procedures.
- Counties where recounts will not be conducted under the authority of the Board of State Canvassers are advised to proceed with any local recounts which must be conducted under the authority of Board of County Canvassers.

Conduct of State-Level Recounts

- As soon as arrangements for any requested state-level recounts are complete, a packet of information is forwarded to each candidate giving full details on the coordination of the recount. The counties post recount with notices provided by Bureau.
- At the appointed time and place, the recount is convened and is conducted under the direction of the Board of State Canvassers' representative.
- The recount process takes place at “work tables.”
 - The number of work tables set up in any given county depends on the number of ballots to be counted. Two to three workers are assigned to each work table.
 - The county is responsible for hiring the personnel needed to staff the work tables.
 - Each candidate can have up to two “challengers” at each work table.
- The ballots are counted under the state laws, rules and policies which govern the process.
 - Optical scan ballots are recounted by hand.
 - Punch card ballots are recounted by tabulator or by hand as determined by the Board of State Canvassers.
 - Michigan is not a voter intent state: if voter did not follow instructions for casting a vote, it is not counted as a vote. Punch card ballot: Vote is counted if chad is completely removed or hanging by one or two corners. Optical scan ballot: Mark must be in “target area.”
- If there is a dispute over how a ballot is counted, the ballot is placed in an “exhibit envelope.”
 - Ballot is inspected by Board of County Canvassers who can overrule or uphold how ballot was counted at work table. Board votes on each challenged ballot; if a deadlock, manner in which ballot was counted at work table stands.

- Board’s decision can be appealed to Board of State Canvassers’ representative who can overrule or uphold decision made by Board of County Canvassers.
 - Any decisions made by Board of State Canvassers’ representative can be appealed to Board of State Canvassers when it next convenes.
- Recount must be completed no later than the 30th calendar day after the deadline for submitting a “counter petition.” Recount is halted if original petitioner withdraws.
- If recount is completed, the Board of State Canvassers convenes to hear any challenges which the candidates wish to present. After ruling on any presented challenges, the Board certifies the result of the recount.
- If disputes remain, must be taken up in court.